

# **EXHIBIT F**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CIVIL ACTION 2:03-cv-01214-DRD-SDW

IN RE: HONEYWELL ERISA : TRANSCRIPT OF PROCEEDINGS  
LITIGATION :

M O T I O N

Pages 1 - 45

Date: July 19, 2005  
Newark, New Jersey

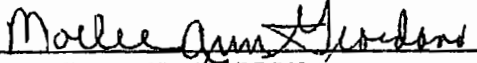
B E F O R E: HONORABLE DICKINSON R. DEBEVOISE,  
SENIOR UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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Pursuant to Section 753 Title 28 United States Code, the  
following transcript is certified to be an accurate record as  
taken stenographically in the above entitled proceedings.

  
MOLLIE ANN GIORDANO  
Official Court Reporter

Colloquy

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1 THE COURT: Good morning. I gather you've given your  
2 appearances to Miss Giordano, so we're ready to proceed.

3 Let me ask before we start in, the gentlemen back  
4 here, are you here to make any comments about the settlement?

5 VOICE: No, sir.

6 THE COURT: All right. So we have nobody appearing at  
7 this point anyway to address the approval of the settlement?  
8 Any other applications? All right, well, Miss Rodriguez, are  
9 you presenting this?

10 MS. RODRIGUEZ: Actually, your Honor, Mr. Meltzer will  
11 be presenting on behalf of the plaintiffs today.

12 THE COURT: All right. Mr. Meltzer, go ahead.

13 MR. MELTZER: Good morning, your Honor. We are very  
14 pleased to be here today. We are here to present the  
15 settlement in all the claims in the Honeywell ERISA litigation.  
16 The settlement is a product of a rather lengthy, sometimes  
17 rather intense negotiations between the parties. Your Honor,  
18 to summarize what the settlement provides for, monetary and  
19 structural relief. On the monetary side, it calls for 14  
20 million dollars to pay into the Honeywell plans. It will be  
21 distributed to the participants and further pro rata share, and  
22 in accordance with how much they may have lost due to their  
23 investments in Honeywell stock. Your Honor, if I could, one  
24 bit of housekeeping. We had submitted a plan.

25 THE COURT: And I gather you propose not to pursue

Colloquy

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1 that this morning?

2 MR. MELTZER: That's right.

3 THE COURT: We will address that question later.

4 MR. MELTAER: It's largely worked out, and I think  
5 there's some details that I think we need to finalize, and the  
6 parties will get together and submit something in due course.

7 With respect to the structural part of the settlement,  
8 previously the Honeywell plan provided that participants cannot  
9 invest their money in anything but Honeywell stock until they  
10 were 55, and had accumulated 10 years of service in the plan.  
11 Those restrictions have been lifted or unlocked, so to speak,  
12 so now participants can move their money about in any of the  
13 plans in investment alternatives.

14 The other motion before your Honor today is counsel's  
15 motion for fees, expenses, and payment of case contribution  
16 orders; namely, plaintiffs.

17 With respect to the motion for approval of settlement,  
18 we seek the Court's finding that the settlement is fair,  
19 adequate, and reasonable under Rule 23 and the Third Circuit  
20 standards. We also seek final certification of settlement  
21 class, and I can give you a brief background of the litigation  
22 to this point.

23 THE COURT: All right.

24 MR. MELTZER: Okay. The cases were initially filed in  
25 March, 2003. They allege breaches of fiduciary duty under

## Colloquy

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1 ERISA, specifically Section 409 and 502 of ERISA. There were  
2 two cases filed. They were ultimately consolidated in May of  
3 2003. There was a consolidation and organizational order  
4 entered by the Court. At that time, my firm and Ms. Rodriguez  
5 leads with the liaison counsel, and we secured certain  
6 documents, ERISA-related documents that relate to the governing  
7 of the plan. They are essentially the trust agreement and all  
8 the governing instruments under which the plans are operated.

9 We then continue by our investigation of the claims,  
10 and essentially to prepare the filing of the consolidated  
11 complaint. The consolidated pleading was filed on July 28,  
12 2003. It is fairly long, it's fairly detailed, it essentially  
13 groups three sets of defendants, Honeywell International,  
14 members of the retirement plan's committee, members of the  
15 company's investment committee, and it sets out a variety of  
16 allegations relating to why Honeywell stock, at least  
17 plaintiffs allege, was imprudent during that period. Problems  
18 that the company was having related to certain mergers, Allied  
19 Signal mergers. Also a contemplated merger with General  
20 Electric. Claims for relief based on breach of fiduciary  
21 duties under ERISA; to monitor fiduciaries under ERISA; and  
22 also prohibit transactions.

23 Following the filing of that consolidated pleading,  
24 that touched off some motion practice. Defendants moved to  
25 dismiss the complaint, and we of course opposed it.

## Colloquy

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1 THE COURT: You're familiar with what took place here  
2 in court?

3 MR. MELTZER: That ultimately resulted in oral  
4 argument before your Honor, and ultimately an order granted in  
5 part, denied in part, defendant's motion.

6 At that time the parties were also engaged in class  
7 certification discoveries as a result of the magistrate waiting  
8 to enter an order bifurcating discovery in the matter. We were  
9 engaged in propounded discovery, compounded discovery. We had  
10 several meet and confer sessions, some rather lengthy, some  
11 rather contentious, but we ultimately framed a couple of issues  
12 for the Court. We had a couple of motions to compel pending  
13 the time the settlement was reached.

14 The other aspect of the litigation that I would point  
15 out is that the ERISA plaintiffs and counsel here today appear  
16 before your Honor in the securities case because there was some  
17 questions if they were reached in their case.

18 THE COURT: What was the settlement figure in that  
19 case?

20 MR. MELTZER: In the securities litigation?

21 THE COURT: Yeah.

22 MR. MELTZER: I believe it was a hundred million  
23 dollars.

24 Yeah, we appeared at the fairness hearing in the  
25 securities litigation to make sure the relief was not -- could



## Colloquy

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1 not be read to the certain defense in this litigation.  
2 Settlement discussions began sometime in the spring of '04, and  
3 frankly, your Honor, I believe they were touched off by an  
4 inquiry you made during the contest of a securities hearing as  
5 to whether class counsel in the ERISA case has begun a  
6 settlement dialogue. And we're appreciative of that fact,  
7 because sometimes that's just the kind of push the parties need  
8 to talk about settlement in a fruitful way. We had rather  
9 protracted settlement discussions.

10 There is essentially two grounds, if you will, in  
11 negotiation. We had asked your Honor to refrain from issuing  
12 his opinion on the motion to dismiss, sort of insuring the  
13 maximum amount of uncertainty while settlement talks were  
14 proceeding. We reached an impasse at some point. We then  
15 contacted your Honor and asked that you issue your opinion.  
16 And after it's received, we sort of picked up on settlement  
17 negotiations at that time.

18 Beyond the settlement, we went over the terms of the  
19 actual agreement. We proceeded with some confirmatory  
20 discovery that involved largely the production of. Corporate  
21 minutes, there are two committees I mentioned before,  
22 Retirement Plan Committee that deal with operations an  
23 administration of the plans. We reviewed some of those  
24 minutes. We talked to a large --

25 THE COURT: How far will discovery proceed in the

Colloquy

7

1 securities class action? Have they gotten into merits  
2 discovery.

3 MR. MELTZER: My involvement was limited, your Honor.  
4 But as I understand it, I think they were well into merits --

5 THE COURT: Well, the point of my question is, were  
6 you able to draw on the information and discovery in that case  
7 to assist you in this case?

8 MR. FRANCIS: Judge, if I may, I was the only one who  
9 was in both cases. There were a limited number of depositions  
10 in the securities litigation, fair amount of document  
11 discovery, and very little depositions.

12 THE COURT: And the document discovery?

13 MR. FRANCIS: Yes, yes, a fair amount of that.

14 MR. MELTZER: The only thing I can say, your Honor, in  
15 direct response, I didn't have access to anything that went on  
16 in the securities litigation, with the exception of pleadings  
17 that were filed.

18 THE COURT: And there were motions filed --

19 MR. MELTZER: Right.

20 THE COURT: -- in that case. And I assume you've  
21 followed whatever was going on in the court?

22 MR. MELTZER: Yes, especially with respect to  
23 settlement. You do what you have to do.

24 THE COURT: All right.

25 MR. MELTZER: Beyond that, that's sort of where our



Colloquy

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1 involvement ended.

2 THE COURT: All right.

3 Well then, what was the data on which you relied in  
4 determining the merits of your case?

5 MR. MELTZER: Your Honor, we got both the  
6 ERISA-related documents, we did a lot of precomplaint sort of  
7 informal discovery. Anything that we were able to obtain from  
8 probable available sources, SEC filings, the DOL, anything that  
9 we got from the defendants, both before the complaint was filed  
10 and in the context of discussing settlement. That's the kind  
11 of information we relied upon. There included information with  
12 regard to the insurance that the company had taken out for  
13 fiduciary claims, it included information regarding the plans,  
14 purchases, and sales of Honeywell stock during the time period.  
15 Again, the minutes of the committees that were assessing the  
16 propriety in investing in Honeywell stock were produced the day  
17 after the agreement was reached in a confirmatory capacity.  
18 There was, in addition to whatever we got in the context of  
19 class certification, the discovery, in the way of discovery  
20 responses. Frankly speaking, I'm not sure how much that  
21 dovetails to the merits of the claim. It did somewhat, but  
22 that's not entire overlapping.

23 THE COURT: All right.

24 MR. MELTZER: There was a fairly substantial amount of  
25 information that we were -- that we had access to, both in the

Colloquy

9

1 context of preparing for our complaint and the motion practice,  
2 and in proceeding with settlement negotiations that I think  
3 span settlement -- six or seven months.

4 THE COURT: Good. Okay.

5 MR. MELTZER: Your Honor, I would just like to touch  
6 real briefly on the structural relief part of the settlement.  
7 We are particularly pleased with that. There is a -- there is  
8 a report that we would draw your Honor's attention to that  
9 we've submitted with our approval papers. It's from a  
10 Professor Ramaswamy. He is a professor -- he sort of is a  
11 specialist in trying to quantify what value it brings. He puts  
12 a broad range in terms of value, less concerned about what the  
13 actual value is, and more concerned that people are going to be  
14 able to kind of spread our investments out over a variety of  
15 investments, especially if they see some kind of down turn in  
16 any particular sector of the market. It helps to mitigate  
17 against these kinds of claims going forward, otherwise I can  
18 rely on the submission, and we're not seeking a fee on the  
19 value that he quantifies, fairly large.

20 THE COURT: And it's pretty speculative --

21 MR. MELTZER: Yeah, it is.

22 THE COURT: -- value?

23 MR. MELTZER: Well, it's speculative in one sense  
24 because obviously you're not dealing with people and their  
25 investment decisions in the future. And on the other hand,

## Colloquy

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1 it's fairly empirical, and it's at least well reasoned, and  
2 it's actually based on actual data.

3 With respect to settlement as a whole, both the  
4 monetary and structural components of it, we would ask that the  
5 Court enter a finding that it's fair, reasonable, and adequate,  
6 under Rule 23E, within the Third Circuit. There is a nine  
7 factor test. Frankly, preliminarily, your Honor, the  
8 settlement is presumptively fair under Third Circuit case law.  
9 It was negotiated at arm's length. There was sufficient  
10 discovery so counsel could assess the merits, and counsel has  
11 experienced a similar action, and only a small portion of the  
12 class objected. And those are inadequate notice to the class  
13 participants, and I'll touch on that in a second. Those are  
14 the elements for sort of a presumptive finding of fairness.

15 With respect to notice, the notice in this case, and  
16 it's a non-class, those standards are lower or somewhat  
17 relaxed. Frankly, the notices in this case were outstanding.  
18 There were individual notices mailed out to over a hundred  
19 thousand participants. There was publication in the USA Today,  
20 the Minneapolis Star Union. There was a web site that we made  
21 available through the claims administrator which gave everybody  
22 information regarding the settlement, including court  
23 documents, that had twenty-thousand, two hundred hits in the  
24 small amount of time since notice was effectuated.

25 Despite the notice efforts, there were roughly 18

## Colloquy

11

1 objections, as I counted them. Given the size of the class,  
2 that's a rather small number.

3 With respect to the Dirsh factors, I can run through  
4 those fairly quickly. The first factor, and this is the  
5 nine-factor test that the Third Circuit has enunciated, I think  
6 it's a 1975 case, but it's been reiterated and reiterated. The  
7 first factor is complexity and likely duration of the  
8 litigation. Your Honor, these are fairly novel claims, and  
9 these are fairly new lines of cases. The case law, as your  
10 Honor probably knows from issuing the opinion, is very  
11 unsettled. There is a lot of inherent complexities. Courts in  
12 this district alone have noted the difficulties in trying to  
13 prove one of these cases and advance it all the way to trial.  
14 The expense and likely duration of the litigation, had we not  
15 settled at this point, the litigation probably would have gone  
16 on for at least another year. And a factor of that, the  
17 expense would have been very considerable. Experts in this  
18 kind of case alone are in the hundreds of thousand of dollars.  
19 Document production would have cost some factor of that. So  
20 that factor militates in favor of approval of the settlement.

21 The second Dirsh factor is the reaction of the class  
22 to the settlement. As I say, your Honor, there were roughly 18  
23 objectors. Given the size, winds up to be .01 percent of the  
24 class. The other thing to note about the reaction of the  
25 class, some say too little in terms of settlement, some say

## Colloquy

12

1 it's far too much. We seem to obstruct that.

2 THE COURT: Well, I guess you had a few people who  
3 just don't like class action or class action lawyers.

4 MR. MELTZER: Unfortunately, your Honor, the person in  
5 my position is always the case. There are always people who  
6 are dissatisfied with the way Rule 23 operates. By and large  
7 the class is -- by not objecting is sort of affirming the  
8 reasonableness of the settlement, and I think that factor also  
9 militates in favor of the finding fair and reasonable. The  
10 proceedings and the amount of discovery, as we discussed  
11 previously, the case was settled after your Honor issued the  
12 motion to dismiss. Class certification, the discovery was  
13 ongoing at the time. The class, as I addressed briefly,  
14 earlier, class certification and discovery was proceeding  
15 because it hadn't bifurcated at that point. Merits discovery  
16 has been stayed, despite our objection. We lost on that one.  
17 Class certification discovery was determined first, and then  
18 subsequent to a finding on class certification, we were to move  
19 into merits discovery. We had discovery that was produced  
20 informally] before the complaint was filed. We had a lot of  
21 publicly available information. We had dozens and dozens of  
22 participants who had contacted my firm, who gave us  
23 information. We also had information that was produced in the  
24 context of negotiating the settlement. All of those factors  
25 essentially amounts to us having clearly a considerable amount



## Colloquy

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1 of information and enough information that we can assess the  
2 propriety of moving forward with this settlement today.

3 The fourth and fifth test of the Dirsh test is showing  
4 liability. These are difficult cases, as I touched on briefly.  
5 There is a dearth of case law with respect to whether the cases  
6 are meritorious and can go forward on any number of fronts,  
7 whether it's in the face of a presumption or in terms of  
8 standing to bring the claims. There is a District Court  
9 opinion, your Honor, in this district shortly before you issued  
10 your opinion on the motion to dismiss, which dismissed all the  
11 claims in analogous actions based on standing and the inability  
12 to proceed in this type of action. There is a limited number  
13 of circuit court decisions that guide us. And frankly, I have  
14 felt we had strong claims with respect to liability, as the  
15 defendants I'm sure think they have very strong defenses with  
16 respect to liability.

17 In terms of damages, this particular case is not a  
18 sort of fraud of the century, if you will. It's not an Enron  
19 or Worldcom. It's not a case where the company spiraled into  
20 bankruptcy. I think the close, the trade was somewhere up to  
21 forty dollars a share. It's obviously a viable company.  
22 Factor that with the sort of performance of the stock, visa-vis  
23 the market during the time period, and whether it  
24 underperformed or out performed certain indexes, damages would  
25 be a very difficult proposition for us to prove. There was a



## Colloquy

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1 drop in the stock obviously between the beginning and end of  
2 our class period. Whether we could tie that to the specific  
3 fiduciary action or inaction, obviously is something that we  
4 would only ote if we proceed through an entire trial. But  
5 based upon our experience in other cases, this was a difficult  
6 case in terms of trying to prove up the actual damages. And  
7 frankly, your Honor, if you look at the memorandum that the  
8 defendants filed yesterday, we would have been lucky to prove  
9 any damages at all, based on the statements made in that  
10 memorandum.

11 The sixth Dirsh factor is the risk of maintaining a  
12 class action through trial. Frankly, your Honor, I think the  
13 class would have been certified. I think these cases make for  
14 perfect class actions under 23D-1. I think they said all the  
15 elements of 23A pretty clearly, and the cutting against that of  
16 course is that the defendants had already undertaken a very  
17 aggressive class certification. And in light of that, they  
18 would have attacked the accuracy of our named plaintiffs. We  
19 were preparing for depositions at the time we settled. There  
20 was certainly a risk that we wouldn't be able to maintain a  
21 class at trial, albeit I think a small one.

22 The seventh Dirsh factor is the ability of the  
23 defendants to withstand a greater judgment. Your Honor, we  
24 don't challenge whether Honeywell could sustain a greater  
25 judgment than what we would have secured here. This factor

## Colloquy

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1 standing alone doesn't preclude the entry of a settlement. I  
2 think the waiver and anti-trust case in the Third Circuit, just  
3 because the company could pay more, doesn't mean that the  
4 settlement shouldn't be approved. You have to look at all the  
5 other compliments and all the other factors.

6 The eighth and ninth factors within the Dirsh test are  
7 the range of reasonableness of the settlement in light of the  
8 best possible recovery and the range of reasonableness of the  
9 settlement fund to possible recovery in light of the attendant  
10 risks of litigation. Frequently they are analyzed together.  
11 The Third Circuit has pointed out that this settlement, these  
12 factors should be interpreted essentially as to whether the  
13 settlement represents a good value for a relatively weak case.  
14 In light of some of the problems, not only in terms of the law,  
15 but as they apply to the facts of this particular case, clearly  
16 a solvent company and very viable company. I think this is an  
17 excellent result, both in terms of securing almost all the  
18 fiduciary liability policies, despite the fact that there was a  
19 denial of coverage and very -- essentially, when you -- base it  
20 again on the risk that we wouldn't be able to get anything at  
21 all, it's an excellent recovery. And when you base it against  
22 the best possible recovery, and the problem we would have, I  
23 think again the factor is clearly supportive of approving the  
24 settlement.

25 Finally, the motion for approval seeks final

Colloquy

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1 certification of the settlement classes. Obviously it's not  
2 opposed by the defendant's settlement classes. Any person who  
3 is a participant in the --

4 THE COURT: I don't think you have to read the  
5 definition over.

6 MR. MELTZER: That's set forth in the papers. We  
7 think it clearly meets all the Rule 23 requirements, and we  
8 would seek certification of the settlement class under 23A, and  
9 then 23B(1) and B(2).

10 THE COURT: All right.

11 MR. MELTZER: There's all I have with respect to  
12 approval, your Honor.

13 THE COURT: Then we get to the application for fees  
14 and expenses.

15 MR. MELTZER: Okay.

16 Your Honor, we submitted a motion for attorney's fees,  
17 reimbursement for expenses and case contribution. We requested  
18 25 percent of the settlement fund that nets out to 3.5 million  
19 dollars, as well as reimbursement of forty-three thousand,  
20 eight hundred and eighty-seven dollars in expenses as well as  
21 an award of twenty-five hundred dollars for each of the named  
22 plaintiffs.

23 THE COURT: In the securities class action I awarded  
24 20 percent.

25 MR. MELTZER: Yes.

## Colloquy

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1 THE COURT: Is there some reason why there should be a  
2 higher percent in this case than in that case?

3 MR. MELTZER: Your Honor, the answer I guess is, given  
4 the higher number, sometimes when you have higher awards,  
5 courts will take the percentages down and the Third Circuit  
6 called it frankly the range of settlement. The fee awards in  
7 these types of cases have been between 20 and 30. I think 25  
8 is reasonable. I think it is, in light of the multiplier, it  
9 is certainly reasonable. I think these are a little more novel  
10 in terms of whether we'd ever be able to to recover anything,  
11 including our times, as opposed to security litigation --

12 THE COURT: You see a greater risk.

13 MR. MELTZER: There's somewhat of a greater risk in  
14 this action. Beyond that, I think -- you know, if you look at  
15 the factors, the Third Circuit sets out, I think, given the  
16 complexity, and I think your Honor said the risk of not payment  
17 all at all, and there was a fairly substantial risk of  
18 nonpayment, particularly after that District Court opinion in  
19 New Jersey that dismissed the claims, which came down before --  
20 before we settled. I think that militates in favor of a  
21 slightly higher percentage, especially when you couple that  
22 with the fact that it's a smaller aggregate amount, which  
23 doesn't require sort of a slide back. They call it a slide  
24 back on a mega settlement fund. And there's also fairly --  
25 again, I believe very substantial and valuable structural

## Colloquy

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1 relief that is attendant to the settlement, for which we're not  
2 seeking any fee at all.

3 THE COURT: All right. And I guess that's to the --  
4 to the case contribution payment to the named plaintiffs. I  
5 don't see that as much of a problem. How many named plaintiffs  
6 do you have?

7 MR. MELTZER: Six.

8 THE COURT: All right. I guess that's all the  
9 applications you've got.

10 MR. MELTZER: I believe so.

11 THE COURT: Mr. Francis.

12 MR. FRANCIS: Your Honor, Mr. Eccles has a few brief  
13 remarks to make.

14 MR. ECCLES: Thank you, your Honor. And I will be  
15 brief.

16 Let me exercise the main points why we think this  
17 settlement should be approved. First, it's clearly an arm's  
18 length settlement. This was an adversarial process the way  
19 it's supposed to be. I say not at all uncivil, but contentious  
20 is not a bad word to use. We were litigating this hard and the  
21 settlement stopped there. It's also that both Mr. Meltzer's  
22 firm and my firm have many other cases that look a little like  
23 this, and we've been through this, and have the able to assess  
24 what cases are worth, and what cases should go forward. And  
25 from a procedural viewpoint, I don't think that's any question



## Colloquy

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1 that all the class proceedings and notice were more than  
2 adequate to provide notice to the class.

3 From our point of view, and we put this in submission,  
4 so I'll be very brief, from the defendant's point of view, we  
5 thought we had terrific defenses. And the court defense in a  
6 nutshell was the stock market went down, and the Honeywell  
7 stock went down with it, and there's nothing extraordinary  
8 about that. No fraud, no nothing else. And we cited that one  
9 of the other funds, a gross equity fund within these plans the  
10 participants could have put their money in, actually it went  
11 down more than the Honeywell stock over each of the three big  
12 years involved here.

13 And so we thought we had an excellent set of defenses,  
14 your Honor. But like most cases, nothing certain, except that  
15 they'll be a lot of expenses, I think an additional year of  
16 litigation would have been an extremely optimistic viewpoint.  
17 There would have been a lot of depositions and a lot more  
18 document discovery. And so from our viewpoint, it made sense  
19 for both sides to get together and talk, and that's exactly  
20 what we did. And reached a settlement, which I think is  
21 definitely an arm's length settlement, definitely a fair  
22 settlement to the class.

23 The one other point we make, your Honor, is although  
24 some of the objectors did focus on the fees, which is not our  
25 issue, it's a separate issue from the fairness of the rest of



## Colloquy

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1 the settlement, and I think will effectively get taken care of  
2 when the Court approves whatever fee is fair. And unless the  
3 Court has questions with that, we ask the settlement be  
4 approved.

5 THE COURT: All right. Thank you.

6 Anyone else at the counsel table want to speak.

7 MR. MELTZER: Only to point out for the record, and I  
8 think Mr. Eccles knows this, to the point where I was  
9 contentious, to the extent I say contentious, and it was not  
10 well taken on the other side, it was not my intent. It was a  
11 hard fight, I should have said.

12 THE COURT: I didn't take it in any invidious sense.  
13 Is there a Mr. Smith in the courtroom? I think he filed a  
14 notice and wanted to be heard. All right. And there's nobody  
15 else who has appeared either in favor of, or in opposition to  
16 the settlement.

17 I think it's important or useful at least to resolve  
18 the matter at this point, so I'm going to impose upon you to  
19 read a rather lengthy opinion into the record. I'll reserve  
20 the opportunity to correct any transcript which results from  
21 that before it's officially made a part of the record.

22 This action was commenced on March 17th, 2003, when  
23 Plaintiff Richard Ramseyer, a participant in the Honeywell  
24 Savings and Ownership Plan I, filed a class action complaint  
25 asserting claims under the Employee Retirement Income Security

## Colloquy

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1 Act of 1974 (ERISA). The Ramseyer action sought relief for  
2 losses to the Honeywell Savings and Ownership Plans I and II,  
3 (collectively the "Plan"). On May 8th, 2003, the Ramseyer  
4 action was consolidated with Freund v. Honeywell International,  
5 Inc., et al., 03-cv-1626 (District of New Jersey), a related  
6 action involving similar allegations and claims. The order of  
7 consolidation also appointed Shiffren & Borroway, LLP and  
8 Trujillo Rodriguez & Richards, LLC as lead and liaison counsel  
9 for plaintiffs, respectively. Plaintiffs filed a consolidated  
10 complaint for breach of fiduciary duty on July 28th 2003.

11 After extensive investigation, and a motion to dismiss  
12 the complaint, a hearing on the motion, class discovery and  
13 settlement discussions, the parties arrived at a settlement.  
14 Upon motion of the plaintiffs, the Court preliminarily approved  
15 the settlement, conditionally certified a settlement class  
16 pursuant to Federal Rule of Civil Procedure 23, approved a  
17 notice plan and scheduled a final fairness hearing. The case  
18 is now before the Court for certification of a settlement  
19 class, a ruling upon the fairness, reasonableness and adequacy  
20 of the settlement, approval of the cash contribution awards for  
21 named plaintiffs, and award of attorneys' fees and expenses.  
22 Originally plaintiffs moved for final approval of a plan of  
23 allocation, but both plaintiffs and defendants have requested  
24 this motion be adjourned for a brief period to permit  
25 refinement to be made in the plan.

## Colloquy

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1 First, proceedings. The consolidated complaint names  
2 the defendants Honeywell, members of the Company's Retirement  
3 Plans Committee, members of the Company's Pension Investment  
4 Committee, and Michael R. Bonsignore, Chairman and CEO of  
5 Honeywell from April 2000, through June, 2001. The  
6 consolidated complaint alleges, inter alia,, that defendants  
7 breached their fiduciary duties by allowing the Plan to  
8 purchase and hold Honeywell common stock at a time when  
9 Honeywell stock was an imprudent investment. In particular,  
10 plaintiffs allege that the Plan was allowed to accumulate and  
11 maintain, through company-encouraged participant investments  
12 and company-matching contributions, a large position in  
13 Honeywell common stock.

14 According to plaintiffs, such a heavy single-equity  
15 investment, in addition to being inherently risky, was  
16 particularly imprudent, given the persuasive problems that  
17 beset the company stemming from the consummated Allied Signal  
18 transaction, and the failed General Electra merger, the  
19 ramifications of which defendants were fully aware. Further,  
20 plaintiffs allege that Honeywell and certain individual  
21 defendants made material misrepresentations through Securities  
22 and Exchange Commission filings and other public  
23 pronouncements, and withheld pertinent information, that  
24 compromised participants' ability to make informed investment  
25 decisions. When the company finally disclosed that the Allied

## Colloquy

23

1 Signal transaction resulted in expensive operational problems  
2 and substantial customer losses, and that the General Electric  
3 merger would not be effectuated, the Plan's assets were  
4 depleted as the value of the Honeywell stock declined.

5 The consolidated complaint further alleges that  
6 defendants are liable under ERISA as a result of their: One,  
7 engaging in prohibited transactions involving the Plan's assets  
8 with parties-in-interest; two, failing to properly monitor and  
9 provide material information to the Pension Investment  
10 Committee; three, allowing or abetting fiduciary breaches of  
11 their cofiduciaries; and four, failing to avoid or remedy  
12 inherent conflicts of interest between their corporate  
13 interests and their fiduciary responsibilities to the Plan  
14 under ERISA. The consolidated complaints seeks plan-wide  
15 relief under Section 409 and 502 of ERISA.

16 Plaintiffs' counsel conducted a thorough investigation  
17 into these allegations. They reviewed documents produced by  
18 defendants and publicly-available materials related to the  
19 company and the Plan. They analyzed specific corporate  
20 transactions and interviewed Plan participants. In addition,  
21 counsel derived certain information from a securities class  
22 action initiated in 2000 in this court and which involved many  
23 factual allegations relevant to the claims in this action. In  
24 re Honeywell Securities Litigation, No. 00-3605.

25 Defendants vigorously contested the litigation. On

## Colloquy

24

1 September 29th, 2003, they filed a motion to dismiss. After  
2 extensive briefing, oral argument was heard on January 26,  
3 2004, after which there was further briefing.

4 During this period the parties engaged in a extensive  
5 litigation concerning class action discovery issues. On  
6 January 14th, 2004, Magistrate Judge Wigenton, over plaintiffs'  
7 objections, bifurcated class and merits discovery, staying  
8 merits discovery pending resolution of plaintiffs' motion for  
9 class certification.

10 Also during this period the parties to the parallel  
11 Securities Class Action settled. It was necessary for  
12 plaintiffs' counsel in the instant case to ensure that the  
13 settlement in that action and its release of claims did not  
14 affect plaintiffs' ability to pursue relief in this case.

15 Beginning in the spring in 2004, the parties commenced  
16 settlement negotiations and exchanged information relevant to  
17 that subject, such as performance of Plan investments during  
18 the relevant period, insurance available to satisfy any  
19 possible judgment, including documents evidencing denial of  
20 coverage under the fiduciary insurance policy, settlement in  
21 analogous cases, the precise number of Honeywell shares held by  
22 the Plan, and demographic information for participants as a  
23 means of measuring the impact of proposed structural changes to  
24 the Plan.

25 The parties requested the Court to refrain from



## Colloquy

25

1 issuing its ruling on defendants motion to dismiss while  
2 settlement negotiations were ongoing. In early September 2004,  
3 the parties reached an impasse. Notified of this development,  
4 the Court on September 16, 2004, issued its opinion and order  
5 granting the motion to dismiss with respect to plaintiffs'  
6 prohibited transaction claims and claims for monetary relief  
7 under ERISA, Section 502(a)(3) and denying the motion in all  
8 other respects. In re Honeywell International ERISA  
9 litigation, 2004, U.S. District, LEXIS 21585, (District of New  
10 Jersey, 2004).

11 Upon issuance of the court's opinion, the parties  
12 resumed class certification discovery and resumed settlement  
13 negotiations. Ultimately agreement was reached, resulting in  
14 the agreement now before the Court for approval. Two, the  
15 proposed settlement.

16 The settlement agreement provides the defendants shall  
17 pay \$14 million into an interest-bearing escrow account, (the  
18 "Settlement Fund"). The principal (less amounts expended for  
19 certain approved costs) will accrue interest between  
20 preliminary approval and distribution. The net amount of the  
21 settlement funds, including interest, and after payment of, and  
22 establishment of reserves for, any taxes and Court-approved  
23 costs, fees and expenses (including and Court-approved  
24 compensation to be paid the named plaintiffs), will be paid to  
25 the Plan. After payment of implementation expenses, the



## Colloquy

26

1 remaining amount will be allocated to the Plan accounts of  
2 members of the settlement class according to a Plan of  
3 allocation to be approved by the Court.

4 In addition, the settlement agreement provides for  
5 certain structural changes in the Plan. The operative  
6 documents of each Plan will be amended to state that each Plan  
7 participant who is or has become one hundred percent vested in  
8 his or her Company Matching Contribution Account shall have the  
9 right to direct the investment of his or her Company Matching  
10 Contribution Account balance in the same manner and among the  
11 same investment alternatives as are available for the  
12 investment of employee contributions to the respective plans.  
13 This provides participants with the ability to diversify rather  
14 than being required to remain invested in Honeywell stock.  
15 Plaintiffs retained Professor Krishna Ramaswamy of the Wharton  
16 School at the University of Pennsylvania to analyze the  
17 structural term of the settlement and estimate the value to the  
18 Plan and its participants of the unlocking of Company matching  
19 contributions, past and future. The expert provided a detailed  
20 report of his analysis and estimated that allowing the Plan's  
21 participants to diversify company-matching contributions  
22 previously "locked" into Honeywell stock would provide a  
23 benefit of between \$34.1 million to \$211.4 million, depending  
24 primarily on the percentage of the Plan's Honeywell equity  
25 investments originating from company-matching contributions.

## Colloquy

27

1           The notice to Plan participants advised that class  
2 counsel would file a motion for payment of attorneys' fees of  
3 up to 30 percent of the settlement fund, plus expenses of  
4 litigation, notice and settlement administration, and case  
5 contribution awards for the named plaintiffs.

6           Three, class certification. Plaintiffs urge  
7 certification of the following class for settlement purpose.  
8 "Any person who was a participant in the Honeywell Savings and  
9 Ownership Plan I and II and/or the predecessor Plan named the  
10 Data Instruments, Inc. Employee Stock Ownership Plan, the  
11 Honeywell DMC Savings Plan, and the Honeywell Savings and Stock  
12 Ownership Plan (collectively the "Plan" or "Plan,") at any time  
13 between December 20, 1999 and February 28, 2005 (the "class  
14 period") and whose Plan accounts included investments in the  
15 Honeywell Common Stock Fund, or a beneficiary, alternate payee  
16 representative, or successor-in-interest of any such person  
17 (the "settlement class")."

18           Rule 23(a) sets forth four prerequisites to class  
19 certification: One, numerosity; two, commonality; three,  
20 typicality; and four, adequacy of representation. Each of  
21 these requirements is met.

22           The class is sufficiently numerous because the number  
23 and diverse location of putative class members is such that it  
24 is impractical to join all of the class members in one action.  
25 There are more than 100,000 potential class members, which

## Colloquy

28

1 clearly satisfies the numerosity requirement.

2       There is commonality when the proposed class  
3 representatives share at least one question of law or fact with  
4 the claims of the prospective class. In the present case, the  
5 principal question of law and fact applicable to all  
6 participants is whether the defendant breached fiduciary duties  
7 owed to the Plan and its participants in allowing the  
8 maintenance of existing, and addition of new, heavy investments  
9 in Honeywell common stock when defendants knew or should have  
10 known of its operational problems and accounting irregularities  
11 which negatively affected the prudence of Honeywell stock as an  
12 investment of the Plan during the class period. It is  
13 unnecessary to catalogue the several other common questions of  
14 law and fact that exist as to all members of the class and  
15 predominant over any questions affecting solely individual  
16 class members.

17       The proposed class representatives' claims arise from  
18 the same event or course of conduct that gives rise to the  
19 claims of the other class members and are based on the same  
20 legal theories. Class plaintiffs share the incentives of the  
21 absent class members to pursue this action to its conclusion.  
22 Typicality can be met in class actions brought for breaches of  
23 fiduciary duty under ERISA and is met here. In re Ikon Office  
24 Solutions, Inc., 191 Federal Rule of Decisions, 457, 465  
25 Eastern District of Pennsylvania, 2002). Each class member was

## Colloquy

29

1 an employee of Honeywell, a participant in the Plan during the  
2 class period, and had part of his or her individual Plan  
3 investment portfolio invested in Honeywell stock during that  
4 time. All Plan participants sustained injury arising out of  
5 defendants' alleged wrongful conduct and plaintiffs bring their  
6 claims pursuant to ERISA Sections 409 and 502(a)(2) for  
7 Plan-wide relief; so any relief obtained for such claims would  
8 enure to the Plan as a whole and, derivatively, its  
9 participants during the class period.

10 The class representatives meet the adequacy  
11 requirement of Rule 24(a)(4). They have represented and will  
12 represent the members of the class so as to fairly and  
13 adequately protect the interest of the class. The named  
14 plaintiffs have no interest antagonistic to the class and are  
15 in the same position as all all other members. Class counsel,  
16 Schiffren & Barroway, LLP has had extensive experience in  
17 litigating complex ERISA breach of fiduciary duty class  
18 actions.

19 While it is necessary for class certification to  
20 qualify under only one of the requirements of Rule 23(b),  
21 plaintiffs in the instant case qualify under all three.

22 They qualify under Rule 23(b)(1)(a) and (B). The  
23 relief to be accorded is Plan-wide. Failure to certify could  
24 expose defendants to multiple lawsuits and risk inconsistent  
25 decisions. Failure to certify would create the risk that

## Colloquy

30

1 future plaintiffs would be without relief. Rankin v. Rots, 220  
2 Federal Rule of Decisions 511, 523 (Eastern District of  
3 Michigan, );, Ikon 191 F.R.D. at 466.

4 Although the proposed class meets the requirements of  
5 Rule 23(b)(2), and Rule 23(b)(3), no further discussion is  
6 warranted, as the Court will rely on Rule 23(b)(1) alone.

7 In sum, the action will be certified as a class action  
8 under Rule 23(a) and (b) on behalf of the plaintiffs' proposed  
9 class.

10 Four, Objections to Settlement. Eighteen persons have  
11 lodged specific objections to the settlement terms and/or to  
12 plaintiffs' request for attorneys' fees and expenses, and case  
13 contribution awards for the named plaintiffs. One person, Mr.  
14 Steven K. Smith, wished to be heard at the hearing to express  
15 his objections. He did not appear at the hearing. These 18  
16 objectors represent .016 percent of the more than one hundred  
17 and fifteen thousand settlement class members to whom  
18 individual notice of the settlement was sent. The Court has  
19 read and considered each objection with care.

20 A few are from persons who object to this class action  
21 proceedings per se, either because they do not believe in class  
22 actions as a matter of principle, or because the concept of  
23 awarding substantial attorneys' fees to attorneys who take on  
24 class action cases offends them, or because they believe  
25 Honeywell voluntarily turned over shares of its stock to the



## Colloquy

31

1 Plan, and employees who benefited from these contributions  
2 should not sue their benefactor Honeywell. While these views  
3 are entitled to respectful consideration, they have in effect  
4 been rejected when the Court did not grant defendants' motion  
5 to dismiss and proceeded with the case. They cannot be  
6 advanced again at this time.

7 There are objections either to the settlement or to  
8 the payment of attorneys fees. The objections must be treated  
9 with utmost sympathy, because they are submitted by persons who  
10 believe that they have been grievously injured by the conduct  
11 of the defendants as charged in the complaint. Some are by  
12 employees who had worked loyally for the company for many years  
13 and had counted on their interests in the Plan to provide  
14 comfortable old age, an expectation that in some cases has not  
15 been fulfilled. A few others assert that they had been close  
16 to the management of the Plan and had expressed doubts about  
17 the way they were being handled during the class period,  
18 warnings that had been ignored.

19 The objections generally address three aspects of the  
20 settlement. A number of them attack the adequacy of the  
21 settlement award, others challenge the 30 percent potential  
22 attorneys' fee request; a few challenge payment of a cash  
23 contribution award to the named plaintiffs. In their  
24 submissions, plaintiffs have discussed each objector's  
25 contentions, explaining why they believe they are not a basis



## Colloquy

32

1 for rejection of the proposed settlement. Each of these  
2 objections will be addressed generally in the context of the  
3 discussions of these subjects in the sections of the opinion  
4 that follow.

5 Five, Fairness, Reasonableness and Adequacy. The  
6 fairness reasonableness and the adequacy of the settlement  
7 agreement is supported by the prevailing circumstances.  
8 Settlement of disputed claims, especially those advanced in  
9 complex class action litigation, are favored by the courts.  
10 The Court of Appeals affords an initial procedural presumption  
11 of fairness of a settlement if adequate notice was given to  
12 affected members of the proposed settlement class and "if the  
13 Court finds that (1) the negotiations occurred at arm's length;  
14 (2) there was sufficient discovery; (3) the proponents of the  
15 settlement are experienced in similar litigation; and (4) only  
16 a small fraction of the class objected."

17 In re Cendant Corporation Litigation, 264 F. 3d 201,  
18 223, Note 18 (3rd Circuit 2001). As described above, each of  
19 these four factors was fully met in this case.

20 Beyond these procedural criteria, courts in this  
21 Circuit apply the nine-factor test enumerated in Girsh v.  
22 Jepson, 521 F. 2d 153, 157 (3rd Circuit 1975). Applying these  
23 factors, the Court concludes that the settlement for \$14  
24 million in cash, plus significant structural changes in the  
25 Plan, is fair, reasonable and adequate.

## Colloquy

33

1           A. Complexity, expense and likely duration. All  
2 defendants have denied wrongdoing and liability. They  
3 vigorously through able counsel, defended the action up to the  
4 point of settlement and would no doubt continue to do so,  
5 absent a settlement, defending through continued class action  
6 and merits discovery, class certification, objections, trial,  
7 and, if unsuccessful at trial, on appeal. This action is  
8 complex and raises novel issues in the ERISA context, issues  
9 that have not been decided definitively by the Supreme Court  
10 and Courts of Appeals. If successful, plaintiffs' ultimate  
11 recovery would be delayed for years during which enormous  
12 attorneys' fees and expenses would be incurred. Settlement  
13 ensures prompt payment and enjoyment of the restructured  
14 provisions of the Plan.

15           B. Reaction of the Class to the Settlement. As noted  
16 above, only .016 percent of the more than one hundred fifteen  
17 thousand class members submitted objections to the settlement  
18 agreement, which reinforces the fairness and adequacy of its  
19 provisions.

20           C. Stage of Proceedings and Discovery. The extensive  
21 investigation of the circumstances of this case was described  
22 above. It is apparent the plaintiffs' counsel had full  
23 information relating to the merits of the case and were in a  
24 position to negotiate and evaluate the terms of the settlement.

25           D. Risk of Establishing Liability and Damages.

## Colloquy

34

1 Plaintiffs' counsel who have thoroughly familiarized themselves  
2 with the facts of this case and the applicable law have  
3 concluded that the terms of the settlement represent an  
4 appropriate balance of the amount that might ultimately be  
5 recovered if successful and the risks of not recovering at all.  
6 There are novel and complex issues, some of which the Court  
7 recognized when it addressed defendants' motion to dismiss.  
8 ERISA law is in the process of development. In re Xcel Energy,  
9 Inc. Securities, Derivative & ERISA Litigation, 364 F. Supp.  
10 2d, 980, (District of Minnesota, 2005). In re Global Crossing  
11 Securities and ERISA litigation, 225 F.R.D., 436, 459 Note 13  
12 (Southern District of New York 2004). Computing damages raises  
13 distinct problems. Unlike securities law claims, ERISA  
14 provides relief for the imprudent purchase and holding of stock  
15 by a Plan during the class period. In re Ikon Office  
16 Solutions, Inc., 191 F.R.D. 457, 464 (Eastern District of  
17 Pennsylvania, 2000), but there is little law explaining the  
18 basic principle's application to the type of defined  
19 contribution Plan at issue here. Damages calculations in ERISA  
20 cases such as this one require a sophisticated computer model  
21 of the Plan involved and require consideration of a number of  
22 complex interrelated factors. The legal and factual  
23 complexities and uncertainties of calculating and proving ERISA  
24 damages point strongly towards approving the settlement.

25 E. Risk of Maintaining Class Action Through Trial.

## Colloquy

35

1 There is always a risk that class action status might not be  
2 maintained through trial. If it could not be maintained, the  
3 value of the action would decline precipitously. The Court  
4 does not consider this to be a very serious risk and by itself  
5 it would not be a compelling reason to approve a settlement.

6 F. Ability of Defendants to Withstand a Greater  
7 Judgment. Undoubtedly Honeywell could withstand a greater  
8 judgment, but the other factors weigh sufficiently in favor of  
9 approving the settlement. The risks entailed in seeking a  
10 larger recovery through trial militate against rejecting the  
11 opportunity to receive prompt payment of a lesser sum.

12 G. Reasonableness of the Settlement Fund. One of the  
13 principal grounds of those who filed objections is that the  
14 case is being settled for an inadequate amount, specifically  
15 that plaintiffs should hold out for more than \$14 million in  
16 cash and the changes in the Plan that will allow for greater  
17 diversification among the participant accounts. This is "in  
18 plaintiffs' counsel's estimation, an outstanding result."  
19 Considering the skill and extensive experience of counsel and  
20 the vigor with which this case has been pursued, this  
21 estimation is entitled to considerable deference.

22 The persons who object to the settlement are well  
23 aware of the losses incurred and the hurt that the losses have  
24 caused to Plan participants. They cannot be expected to be  
25 aware of the legal uncertainties in computing damages for

## Colloquy

36

1 recovery purposes and of the legal hurdles to be faced to  
2 secure any recovery at all. One objector urged that plaintiffs  
3 should have calculated how many additional shares of Honeywell  
4 stock the Plan should have been able to purchase if the  
5 company's equity was not inflated in the settlement class  
6 period and compare that to what the Plan held at the end of  
7 that period as an approach to estimating damages. It is  
8 relevant to note that the decline in value of the Honeywell  
9 Common Stock Fund was less in each of the three years of the  
10 2000 through 2002 bear market than the decline in value of a  
11 diversified stock fund that was also an investment option under  
12 the Plan.

13 One objector noted that the Plan held about 10 percent  
14 of Honeywell's outstanding shares. Of significance, \$14  
15 million represents 14 percent of the monetary settlement  
16 reached in the related securities case which this Court  
17 approved some months ago. Further, the \$14 million represents  
18 93 percent of the company's fiduciary liability policy, an  
19 obligation which the insurance company originally disclaimed.  
20 Although no precise value could be placed upon the negotiated  
21 structural relief, the opinion of Professor Ramaswamy  
22 establishes that it is substantial, far more than the \$14  
23 million cash payment.

24 Weighing the various factors, the Court concludes that  
25 the settlement is fair, reasonable and adequate.



## Colloquy

37

1           Six, attorneys' Fees and Expenses. Plaintiffs'  
2 attorneys seek fees in the amount of 25 percent of the total  
3 recovery and out-of-pocket expenses of \$43,887.09 incurred  
4 since this lawsuit began. Several of the objectors filed  
5 objections to the maximum amount of 30 percent that the class  
6 Notice advised might be requested, but the Court will assume  
7 that the objections would be advanced to the 25 percent  
8 request. One objector contended simply that the case does not  
9 require extensive legal work or a complicated determination.  
10 Another would limit fees to what real estate brokers typically  
11 earn, namely 6 percent. Others objected on principle to fees  
12 being paid to attorneys who appear in class actions. Some  
13 simply objected to 30 percent as being too high a percentage.

14           It is understandable that lay persons cannot  
15 appreciate both the amount of work and the risk of receiving no  
16 fee that enter into representation in a class action case. In  
17 the present case, the work which the attorneys performed is  
18 described above. In accomplishing this work, the three law  
19 firms representing plaintiffs devoted 2223.6 hours of attorney  
20 and paralegal time (Schiffrin & Barroway LLP - 2212.6 hours;  
21 Brodsky & Smith, LLC - 28.3 hours; Trujillo Rodriguez &  
22 Richards, LLC - 82.70 hours).

23           It is universally recognized in the courts that  
24 attorneys who generate a fund of recovery for the benefit of a  
25 class should be fairly compensated. Boeing Co. v. Van Gemert

## Colloquy

38

1 444 U.S. 472, 478 (1980). Application of a portion of the  
2 collected funds to the payment of attorneys' fees spreads the  
3 payment proportionately among those who benefited from the  
4 suit. It encourages attorneys to undertake these kinds of  
5 difficult cases.

6 The Court of Appeals for the Third Circuit as well as  
7 the courts of many other circuits have expressed a preference  
8 for awarding attorneys' fees from a common fund pursuant to the  
9 percentage of the fund method of calculation. In re Prudential  
10 Insurance Company Am. Sales Practices Litigation Agent Actions,  
11 148 F. 3d 288, 333, (3rd Circuit 1998). This method is an  
12 alternative to the lodestar method in which a fee is computed  
13 by multiplying the reasonable number of hours the attorneys  
14 expended on the case by the rates charged by comparable  
15 attorneys in the area in which the services were rendered. To  
16 arrive at the ultimate fee, this lodestar figure is usually  
17 multiplied by a factor to reflect the degree of success, the  
18 risk of nonpayment the attorneys faced and perhaps the delay in  
19 payment that they encountered. But, as noted, the preference  
20 is for computing the award on the basis of a percentage of  
21 recovery, perhaps checking the result against a lodestar  
22 computation to ensure that it is not grievously out of line.

23 The amount of the percentage varies case to case, 15  
24 percent, 20 percent, 25 percent, 30 percent, 33 1/3 percent, 38  
25 percent having been awarded. Thirty percent or 33 1/3 percent

## Colloquy

39

1 is quite common. The Court has reviewed the various factors  
2 that govern the determination of an appropriate percentage and  
3 concludes that the requested 25 percent of the class recovery  
4 is reasonable, particularly in light of the fact that the value  
5 of the structural changes in the Plan is not included in the  
6 amount to which the percentage is applied. *Gunter v. Ridgewood*  
7 *Energy Corporation*, 223 F. 3d 195 (3rd Circuit 2000).

8 The proposed settlement appears to be favorable to the  
9 class, conferring the immediate benefit of \$14 million plus  
10 accrued interest less attorneys' fees and expenses and the  
11 named plaintiffs case contributions. In addition, in the  
12 future each Plan participant who is or has become 100 percent  
13 vested in his or her Company Matching Contribution Account  
14 shall have the right to direct the investment of his or her  
15 Company Matching Contribution Account balance in the same  
16 manner and among the same investment alternatives as are  
17 available for the investment of employee contributions.

18 As described above, very few members of the class  
19 voiced objections to attorneys' fees with an upper limit of 30  
20 percent. Eighteen out of the 115,000 to whom notices were sent  
21 filed objections, and not all of the objections were to  
22 attorney's fees. Understandably these few objectors were  
23 unaware of the principles that the courts have developed over  
24 the years for awarding attorneys' fees. The Court recognizes  
25 that very few class members are likely to analyze the notices

## Colloquy

40

1 which are sent to them. Despite every effort to make them  
2 readily understandable to lay people, they cannot help but be  
3 technical in nature, lengthy and complex. The vast majority of  
4 class members rely upon the good faith of the class  
5 representatives and their attorneys and upon the oversight role  
6 of the Court. Thus in the case where the class members do not  
7 include institutional investors an absence of a large number of  
8 objections to the Plan itself and to the requested attorney's  
9 fees is of limited significance. However, in the present case  
10 where the few objections filed did not raise substantial  
11 grounds to reject the requested attorney's fees, the absence of  
12 a significant number of objections and the lack of merit of the  
13 few objections that were filed are factors pointing towards  
14 approving the fee application.

15 Plaintiffs' counsel undoubtedly possess great skill  
16 and experience in this kind of case and have exhibited that  
17 experience during the course of these proceedings.

18 Unlike the typical securities fraud case, a field in  
19 which the law has well developed during the prior decades,  
20 ERISA class actions are a relatively new phenomenon, presenting  
21 complex issues as the courts deal with the complicated ERISA  
22 statute. Faced with this statute, counsel had to engage in  
23 extensive factual explorations and address legal problems both  
24 in the context of seeking class certification and during the  
25 course of the motion to dismiss. In this context both the

## Colloquy

41

1 merits and class litigation, and the settlement negotiations  
2 were conducted with experienced lawyers and powerful law firms  
3 on the opposing side. The Ramseyer lawsuit was commenced on  
4 March 17, 2003, and was consolidated on May 8, 2003. The  
5 consolidated complaint was filed on July 28, 2003. Intense  
6 investigative and litigation activity, described above,  
7 proceeded thereafter and continued until October, 2004 when a  
8 settlement was agreed upon. Had the case proceeded to  
9 additional class action and merits discovery its duration would  
10 have been greater, but one of the objections of the percentage  
11 of recovery method of computing attorneys' fees is to encourage  
12 early resolution of cases and to bring to an end continued  
13 litigation that would generate extensive efforts and increasing  
14 attorneys' fees.

15           The risk of not succeeding on the merits (which would  
16 result in no recovery by the class members and, of course, no  
17 attorneys' fees) was far greater in this case than in a typical  
18 securities fraud case. Apart from the usual difficulties in  
19 developing the factual predicates underlying the legal theory  
20 on the basis of which recovery is sought, in this, an ERISA  
21 case, the legal theories themselves are still subject to  
22 challenge. In particular, the application of long-standing  
23 fiduciary principles in the ERISA context has yet to be  
24 authoritatively developed. As the Court stated in *In re Global*  
25 *Securities and ERISA Litigation* 225 F.R.D 436, 456 (Southern



## Colloquy

42

1 District of New York, 2004).

2 "The ERISA cases would pose additional factual and  
3 legal issues. Fiduciary status, the scope of fiduciary  
4 responsibility, the appropriate fiduciary response to the  
5 Plan's concentration in company stock and defendant's business  
6 practice could be issues for proof, and numerous legal issues  
7 concerning fiduciary liability in connection with company stock  
8 in 401(k) Plan remained unresolved. These uncertainties would  
9 substantially increase the ERISA cases' complexity, duration,  
10 and expense - and thus militate in favor of settlement  
11 approval."

12 The legal and factual contentions of the class members  
13 would be challenged vigorously by defendants' able counsel.  
14 The risks inherent in this case support approval of the  
15 settlement and approval of the attorneys' fees application.

16 Class counsel have described the work they have  
17 performed and the hours expended performing that work -  
18 specifically 2223.6 hours - see the foregoing sections of this  
19 opinion. They will have to continue expending time finalizing  
20 the settlement, overseeing claims administration and dealing  
21 with any appellate issues, should they arise. Without  
22 consideration of the additional legal work that will have to be  
23 performed the lodestar in this case is \$937,160, and the  
24 requested fee represents a multiplier of 3.8. In fund in court  
25 cases multipliers have ranged from 1.7 to 2.66 to 3.15 to 6 and

## Colloquy

43

1 even higher. Prompt resolution of a case is often reflected in  
2 a higher multiplier, rewarding prompt recovery for the members  
3 of the class and discouraging unnecessary protracted  
4 litigation. If I were to compute the lodestar in this case for  
5 the purpose of actually computing the fee, I might have arrived  
6 at a somewhat lesser figure, finding that the rates the  
7 attorneys project to be somewhat high. However, I might well  
8 apply a somewhat higher multiplier, and the end result would be  
9 substantially the same.

10       Considering all these factors, I find that the  
11 attorneys' fees being requested are reasonable and they well be  
12 allowed. No objection has been raised to reimbursement of the  
13 attorneys' expenses totaling at least \$43,887.09 as of the date  
14 of this application. They appear to have been reasonably  
15 incurred and will be allowed.

16       Seven, Named Plaintiffs' Case Contribution Awards.  
17 Class counsel seek approval of case contribution awards to the  
18 named plaintiffs in the amount of \$2500 each. A few class  
19 members objected to the payment of these sums. However, the  
20 persons who agreed to be named as class plaintiffs undertook  
21 responsibilities in connection with the litigation. They had  
22 to provide information and subjected themselves to depositions  
23 to a greater degree than the other members of the class.  
24 Courts frequently allow modest compensation for the role on the  
25 occasion of the settlement of a class action. The modest

## Colloquy

43

1 cases multipliers have ranged from 1.7 to 2.66 to 3.15 to 6 and  
2 even higher. Prompt resolution of a case is often reflected in  
3 a higher multiplier, rewarding prompt recovery for the members  
4 of the class and discouraging unnecessary protracted  
5 litigation. If I were to compute the lodestar in this case for  
6 the purpose of actually computing the fee, I might have arrived  
7 at a somewhat lesser figure, finding that the rates the  
8 attorneys project to be somewhat high. However, I might well  
9 apply a somewhat higher multiplier, and the end result would be  
10 substantially the same.

11 Considering all these factors, I find that the  
12 attorneys' fees being requested are reasonable and they well be  
13 allowed. No objection has been raised to reimbursement of the  
14 attorneys' expenses totaling at least \$43,887.09 as of the date  
15 of this application. They appear to have been reasonably  
16 occurred and will be allowed.

17 Seven, Named Plaintiffs' Case Contribution Awards.  
18 Class counsel seek approval of case contribution awards to the  
19 name plaintiffs in the amount of \$2500 each. A few class  
20 members objected to the payment of these sums. However, the  
21 persons who agreed to be named as class plaintiffs undertook  
22 responsibilities in connection with the litigation. They had  
23 to provide information and subjected themselves to depositions  
24 to a greater degree than the other members of the class.  
25 Courts frequently allow modest compensation for the role on the

## Colloquy

44

1 occasion of the settlement of a class action. The modest  
2 amounts suggested for this purpose are reasonable and will be  
3 allowed.

4 Eight, Plan of Allocation. A ruling on a plan of  
5 allocation will be deferred for a brief period.

6 Nine, Conclusion. For the reasons set forth above, an  
7 order will be entered: One, certifying the class; two,  
8 approving the settlement as fair, reasonable and adequate;  
9 three, approving class plaintiffs' attorneys' petition for  
10 payment of attorneys' fees and reimbursement of expenses; and  
11 four, approving the requested payment of a case contribution  
12 award for the the named plaintiffs.

13 Now, I have one problem here, what is the amount of  
14 the expenses which are being requested for reimbursement? I  
15 have two figures, one would seem rather enormous, four hundred  
16 thousand dollars, which I don't think is correct.

17 MR. MELTZER: No, your Honor. Forty-three thousand,  
18 eight hundred and eighty-seven dollars and nine cents.

19 THE COURT: All right. I must have had a typo here.  
20 That will be contradicted, and the figure which I now have will  
21 be inserted. Forty-three thousand, eight hundred and  
22 eighty-seven dollars and nine cents.

23 MR. MELTZER: Correct.

24 THE COURT: All right. That figure will be  
25 substituted for the four hundred odd thousand, which I stated

Colloquy

45

1 previously.

2 THE COURT: We have orders and what not to be signed.

3 MR. ECCLES: Your Honor, assuming that the parties  
4 reach agreement on the allocation, is it agreeable to file  
5 consent orders rather than file a formal motion for approval?

6 THE COURT: I went over the plan of allocation as  
7 submitted, I saw nothing wrong with it. Does anyone have any  
8 comments on the plan, which I assume is a subject of what will  
9 be coming next?

10 MR. ECCLES: I think there are some expenses that were  
11 not considered at our end that need to be plugged in there.  
12 That's the only --

13 THE COURT: They seem to be fairly trivial. Well,  
14 maybe not to you.

15 MR. ECCLES: Well --

16 THE COURT: Maybe not to you.

17 MR. ECCLES: It's not going to change drastically.

18 THE COURT: Do we need a separate hearing?

19 MR. ECCLES: I don't think we need a separate hearing.

20 THE COURT: Could we just submit a consent order?

21 MR. ECCLES: Yes, your Honor.

22 THE COURT: I'll look at it and see if there's any  
23 other changes in my mind. I doubt that they would, what you  
24 hve given me.

25 MS. RODRIGUEZ: They're the proposed orders, both with



Colloquy

46

1 regard to the settlement and the attorneys' fees.

2 THE COURT: All right. WeLL, let me see what you have  
3 here.

4 In the first paragraph, I'm going to add: For the  
5 reasons stated in the bench opinion. I'm going to add that  
6 after duly reached.

7 (Matter concluded)

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